

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

)
)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
)

) Judge Patti B. Saris
)

)
) THIS DOCUMENT RELATES TO:
)

)
) *The City of New York v. Abbott Labs., et al.*
) (S.D.N.Y. No. 04-CV-06054)
) *County of Suffolk v. Abbott Labs., et al.*
) (E.D.N.Y. No. 03-CV-229)
) *County of Westchester v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-6178)
) *County of Rockland v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-7055)
) *County of Dutchess v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-06458)
) *County of Putnam v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-04740)
) *County of Washington v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00408)
) *County of Rensselaer v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00422)
) *County of Albany v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00425)
)

[Caption Continues on Next Page]

**STIPULATION REGARDING THE
NEW YORK EPIC PROGRAM'S RECEIPT OF AMP DATA**

<i>County of Warren v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00468))
<i>County of Greene v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00474))
<i>County of Saratoga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00478))
<i>County of Columbia v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00867))
<i>Essex County v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00878))
<i>County of Chenango v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00354))
<i>County of Broome v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00456))
<i>County of Onondaga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00088))
<i>County of Tompkins v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00397))
<i>County of Cayuga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00423))
<i>County of Madison v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00714))
<i>County of Cortland v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00881))
<i>County of Herkimer v. Abbott Labs. et al.</i>)
(N.D.N.Y. No. 05-CV-00415))
<i>County of Oneida v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00489))
<i>County of Fulton v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00519))
<i>County of St. Lawrence v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00479))
<i>County of Jefferson v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00715))
<i>County of Lewis v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00839))
<i>County of Chautauqua v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06204))
<i>County of Allegany v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06231))
<i>County of Cattaraugus v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06242))
<i>County of Genesee v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06206))
<i>County of Wayne v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06138))

<i>County of Monroe v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06148))
<i>County of Yates v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06172))
<i>County of Niagara v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06296))
<i>County of Seneca v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06370))
<i>County of Orleans v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06371))
<i>County of Ontario v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06373))
<i>County of Schuyler v. Abbott Labs, et al.</i>)
(W.D.N.Y. No. 05-CV-06387))
<i>County of Steuben v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06223))
<i>County of Chemung v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06744))
AND)
<i>County of Nassau v. Abbott Labs., et al.</i>)
(E.D.N.Y. No. 04-CV-5126))

WHEREAS Defendants Merck & Co., Inc. (formerly known as Schering-Plough Corporation), Schering Corporation, and Warrick Pharmaceuticals Corporation (collectively, “Warrick”) have sought discovery relating to the receipt of Average Manufacturer Price (“AMP”) data by the New York EPIC Program for the Schering and Warrick drugs at issue in these actions, as listed in Revised Exhibit B to Plaintiffs’ First Amended Consolidated Complaint; and,

WHEREAS the New York EPIC Program has stated that producing the requested discovery would be unduly burdensome;

WHEREFORE Warrick and Plaintiffs, by their respective attorneys, hereby stipulate and agree, for the purposes of these cases only, as follows:

The New York EPIC Program has received Average Manufacturer Prices (“AMPs”) from certain prescription drug manufacturers, including defendants in the case styled *City of New York, et al. v.*

Abbott Labs., Inc., et al. (MDL 1456). The EPIC Rebate Agreement instructs manufacturers to certify “that Average Manufacturer Price (AMP), Best Price and Baseline AMP data reported to EPIC are identical to the data reported to the Centers for Medicare and Medicaid Services under Section 1927 of the Federal Social Security Act, if the Manufacturer is required to report such data to the Centers for Medicare and Medicaid Services.” Plaintiffs hereby stipulate and agree that defendants Schering Corporation and Warrick Pharmaceuticals Corporation reported AMPs to EPIC on a quarterly basis beginning in the year identified and for the NDCs identified in Exhibit A attached hereto. This stipulation is solely for the purpose of identifying those NDCs that were provided to EPIC for the time periods specified in Exhibit A, and it does not constitute an admission by any party that the NDCs identified in Exhibit A are properly at issue in this litigation or otherwise properly attributed to the listed defendant manufacturer.

Respectfully submitted,

City of New York and New York Counties in
MDL 1456 except Nassau and Orange

Merck & Co., Inc. (formerly known as Schering-
Plough Corporation), Schering Corporation, and
Warrick Pharmaceuticals Corporation

/s/ Joanne M. Cicala

Joanne M. Cicala
James P. Carroll, Jr.
Jocelyn R. Normand
Kathryn B. Allen

/s/ John P. Bueker

John T. Montgomery (BBO #352220)
John P. Bueker (BBO #636435)
Kim B. Nemirow (BBO #663258)
Russell Patrick Plato (BBO #671087)

KIRBY MCINERNEY, LLP
825 Third Avenue
New York, New York 10022
(212) 371-6600

ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000

Dated: March 5, 2010

CERTIFICATE OF SERVICE

I, Russell Patrick Plato, certify that a true and correct copy of the foregoing Stipulation was served on all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2 on March 5, 2010.

/s/ Russell Patrick Plato
Russell Patrick Plato